

locus of regulatory activity.<sup>50/</sup> Consistent with the primacy of the franchise unit, the determination of whether a cable system faces effective competition and the evaluation of a system's

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<sup>50/</sup> See 47 U.S.C. § 543(a)(2)(A). A franchising authority's regulation of basic rates is contingent upon receiving and maintaining certification from the Commission. 47 U.S.C. § 543(a)(3)-(5).

Absent appropriate authority from the state government, moreover, a franchising authority is ineligible for certification. See 47 U.S.C. § 543(a)(4)(B) (Commission cannot approve a franchising authority's certification if it finds that the entity lacks the necessary legal authority to adopt the Commission's basic service regulations). A local government body has no inherent right to grant franchises, but derives its power from the state. See Antieau, MUNICIPAL CORPORATION LAW, ¶¶ 29.01, 29.02 (1975); McQuillin, MUNICIPAL CORPORATIONS, ¶¶ 34.03 at 9; 34.14 (3d ed. 1970). By enacting Section 636 of the Communications Act, 47 U.S.C. § 556(b), which was left unchanged by the 1992 Cable Act, Congress made clear that it did "not intend . . . to upset the traditional relationship between state and local governments, under which a local government is a political subdivision of the state and derives its authority from the state." 1984 House Report at 94.

Congress recognized specifically that state law is the source of a local franchising authority's authority to regulate cable rates. "A state may, for instance, exercise authority over the whole range of cable activities, such as . . . rate regulation or deregulation . . . as long as the exercise of that authority is consistent with [the Cable Act]." *Id.* Even as amended last year, the Cable Act leaves to the states the decision of whether and to what extent to grant rate regulatory authority to local governments. Absent such a grant, a local government cannot certify that it "has the legal authority to adopt . . . regulations" with respect to rates and therefore cannot regulate the basic service tier. See 47 U.S.C. § 543(a)(3)(B).

Nothing in the 1992 Cable Act preempts a state's decision to withhold rate regulatory authority from a local government. For preemption to occur, Congress must express a clear intent to preempt state law, see, e.g., *Jones v. Rath Packing Co.*, 430 U.S. 519, 526 (1977), *reh'g denied*, 431 U.S. 925 (1977), or a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Neither of these situations exists in this case. Here, Congress not only expressed no intent to preempt state laws prohibiting rate regulation, but also specifically contemplated that such laws would remain in effect.

system's compliance with the Act's "uniform rate structure" requirement should be made on a franchise-area basis. Use of a broader "geographic area" standard would subject cable operators to unnecessary regulatory burdens.

For purposes of regulating both basic tier service and cable programming services, the effective competition analysis required by the Act must be undertaken on a franchise-area basis. The "system-wide" measurement suggested by the Commission for cable programming services<sup>51/</sup> could subject an entire cable system to regulation, even where certain of its franchise areas face effective competition. Such a result would not only undermine the designation of the franchise area as a regulatory unit, but, more significantly, would also impose regulation unfairly where competitive services exist.<sup>52/</sup>

Likewise, the Act's uniform rate structure requirement requires only that cable operators have a rate structure that is uniform throughout a *franchise area* rather than some broader "geographic area."<sup>53/</sup> Although Congress used the term

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<sup>51/</sup> See Notice at ¶ 18.

<sup>52/</sup> A similar danger exists with respect to the Commission's proposal to permit communities served by the same cable system to file a joint certification and to exercise joint regulatory jurisdiction. See Notice at ¶ 21. Such a proposal could destroy the integrity of the regulatory unit designated by Congress and could encourage regulation where it is not needed and would not otherwise exist.

<sup>53/</sup> The Act requires cable operators to "have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system." 47 U.S.C. § 543(d).

"geographic area" in the statute, it meant that term to refer to a franchise area.<sup>54/</sup>

Interpreting the term more expansively, to include "the contiguous area served by [a] cable system,"<sup>55/</sup> would impose a tremendous burden on cable operators. On Long Island, for instance, Cablevision's systems hold franchises from 102 different franchising authorities. Subscriber demand also varies from one franchise area to the next. Even assuming that the Commission could devise a definition of "geographical area" for Long Island (would it be limited to Nassau County alone, Suffolk County alone, or some portions of each -- the territory served by Cablevision extends from the Nassau-Queens line east to Montauk), it would be extraordinarily burdensome, if not impossible, for Cablevision to try to satisfy these disparate regulatory

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<sup>54/</sup>See Senate Report at 76 ("This provision is intended to prevent cable operators from having different rate structures in different parts of *one cable franchise*."). (emphasis supplied).

The Commission expresses concern that the uniform rate provision would be duplicative of the 1992 Cable Act's general grant of authority to prevent discrimination if "geographic" is interpreted to mean "franchise." See Notice at ¶ 114. Cablevision rejects this suggestion. The non-discrimination provision cited by the Commission does not itself prohibit discrimination. See 47 U.S.C. § 543(e). Rather, it simply enables Federal, State or local authorities to do so if they choose. In order to ensure a uniform rate structure in each franchise area, Congress included a separate provision specifically requiring such uniformity. The Senate included both provisions in its bill, evidencing the drafters' belief that the provisions addressed different issues even assuming that the applicability of the uniform rate section was limited to franchise areas. See Senate Report at 76.

<sup>55/</sup> See Notice at ¶ 115.

authorities and subscriber demands with a single rate structure.<sup>56/</sup>

### Conclusion

Consistent with the foregoing and for the reasons stated therein, the Commission's rate regulation requirements should be

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<sup>56/</sup> Because regulatory requirements and subscriber demand will differ from franchise to franchise regardless of the method under which rates are regulated, a "cable system" interpretation would burden cable operators even if the Commission adopts a benchmarking alternative. Cf. Notice at ¶ 115 (suggesting that a "contiguous area" interpretation presents problems only under a cost-of-service alternative).

Cablevision agrees with the Commission that the uniform rate structure provision does not prohibit operators from establishing reasonable categories of services, with differing rates, terms and conditions of service, or from offering promotional rates. See Notice at ¶ 113 and n.150. The statute requires a uniform rate structure, not uniform rates.

limited to the minimum necessary to effectuate the purposes of  
the 1992 Cable Act.

Respectfully submitted,

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January 27, 1993

D12970.4

# Keeping You Informed

Cablevision wants to keep you up to date on the programming, services and rates we offer. You'll receive this information semi-annually, or when you change your level of service, or if we make certain changes in your programming. And, of course, we will provide this information whenever you request it.

## **When will you let me know if my service changes?**

If possible, we will tell you about significant programming or network changes 30 days before they occur. If this is not possible, we'll notify you within 30 days of the date we first know of these changes.

## **What kind of changes will I get a notice about?**

We'll tell you if a network or a channel is no longer available as part of your level of service, or if there is a significant change in the character of the programming service you currently receive.

## **What rights do I have if I get a notice that my service has changed?**

You have the right to terminate your service or select a lower level of cable service at no charge if you let us know up to 45 days after you receive our notice.

## **If I subscribe to a premium service tier, do I have any other rights?**

Yes. If you receive a notice that your service is being changed and you advise us within 30 days that you intend to downgrade or terminate service, you will be entitled to a refund of any prepaid service charges or installation, upgrade or other similar one-time charges that you may have incurred in connection with your service during the six months prior to the change.

## **What if I subscribe to the entry level of service?**

It depends. If, for example, within 90 days of your subscription to Cablevision's entry level of service a network or channel is removed from that service but remains on the cable system, and within 30 days of that change you advise us that you want to upgrade your service, you may be entitled to a free upgrade plus a discount on service for up to six months. If, however, the channel or network is no longer available on Cablevision's system and you tell us within 30 days that you want to either terminate your service or continue at the same service level, you may be entitled to receive a refund on any installation, upgrade or other charges you paid within the six months prior to the change. If you remain an entry level cable subscriber, you may also receive, for a limited period of time, a partial credit on your cable bill.

## **How will I know what my specific rights are?**

We'll explain the specific criteria to you if and when a network or channel change occurs.

## **Will my converter work with a universal remote?**

If you have an addressable converter, we can activate its capacity to accept remote signals from many store-bought remotes. There may be universal remotes not compatible with your Cablevision converter. Should you choose to purchase a universal remote, we'll ask you to fill out a simple information form that will help us determine if your store-bought remote is compatible with your Cablevision converter. If it is compatible, we will activate your converter. This form is available at our Walk-In Centers.

Please keep in mind that we cannot assume responsibility for the maintenance or repair of store-bought remote control units.

If you are not sure if you have an addressable converter, please call our Customer Service Office for assistance. In Nassau call: 364-8400, in Suffolk call: 225-5555.

## **What are your current rates and services?**

We've included our current rates, services and channel lineup in this pamphlet. Please take a few moments to review them. If you have any questions, call us. We'll be glad to answer them.

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KEEPING YOU INFORMED - ISLIP

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## Introducing The One-Touch Remote Control. No Extra Charge.

If you've been using two remotes – one for your converter, one for your remote controlled TV set – now there's a way to end the inconvenience.

### **The One-Touch Remote Control. New from Cablevision.**

The One-Touch advances the definition of ease and convenience because it eliminates the need for two remotes. *With one touch, you can turn your TV set and cable converter on and off!*

Enjoy the complete convenience of the One-Touch Remote Control for the same monthly rate you're now paying for remote service.

The One-Touch provides you with all of the features currently available with your present remote:

- volume control\*
- muting
- channel change/scan
- last channel recall
- favorite channel recall
- any channel parental guide control

\*Also, in addition to your present volume control capability which adjusts volume through your converter, the new One-Touch Remote gives you the option to control volume directly through your TV set.

And should you ever have a problem with the One-Touch, we'll repair or replace it free of charge.

## Exchange Your Present Remote.

Getting the One-Touch is easy. Simply take your present Cablevision remote to your nearest Cablevision Walk-In Center (see below) for a free exchange. Bring the make and model number of your TV set and we'll be happy to assist you in entering the appropriate code to turn your TV set on and off.

## Universal Remote Capability.

In addition to the One-Touch Remote Control available from Cablevision, we'd like to inform you that we can activate your converter's capacity to accept signals from many store-bought remotes.

Please keep in mind that there may be universal remotes sold in stores that are not compatible with your Cablevision converter. Should you choose to purchase a universal remote, we'll ask you to let us know the model you have chosen by filling out a simple form available at our Walk-In Centers or by calling us. This information will help us determine the compatibility of the remote you selected with our converter. If your store-bought remote is compatible, we'll activate your converter at no extra charge.

Please understand that we are not responsible for repair of store-bought remote control units.

No matter which option you choose, remote control service is a valuable addition to your cable viewing needs. Cablevision hopes the recent advances in remote control technology will enhance your overall viewing satisfaction.

As always, we value your business.

### **Cablevision Walk-In Centers:**

1600 Motor Parkway  
Hauppauge

Hours: Mon. - Fri., 8:30AM - 7PM  
Sat., 8:30AM - 5PM

280 Middle Country Road  
Selden

Hours: Mon.-Wed. & Sat., 8:30AM - 5PM  
Thurs. & Fri., 8:30AM - 7PM